

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0118P
Sales Tax
For Period Ended 12/31/2005**

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ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b)(c).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer was assessed a 10% negligence penalty for the late payment of sales tax for the period ending 12/31/2005. For sales/use tax purposes, the taxpayer is an early filer.

The taxpayer registered for Indiana sales tax effective 11/01/2005. The taxpayer was changed to an Electronic Funds Transfer payment method effective for the 12/31/2005 sales tax period. The due date for the 12/31/2005 sales tax payment was 01/20/2006. The payment was not made until 01/31/2006 via electronic funds transfer. The taxpayer protest the penalty stating that it was not notified by the Department of its filing frequency until after the filing of its 12/31/2005 Form ST-103. Further the taxpayer states that the penalty assessed is an extremely large amount to pay due to it not receiving notice of filing frequency.

I. Tax Administration- Ten Percent (10 percent) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10 percent) negligence penalty imposed for the late filing of its 12/31/2005 sales tax return pursuant to IC 6-8.1-10-2.1.

Under Indiana Regulation 45 IAC 15-11-2 (c) the negligence penalty may be abated if the taxpayer is able to demonstrate reasonable cause. In this instance, the taxpayer states its basis for requesting the abatement of penalty is due to the Department failing to timely notify it of its filing frequency.

When the taxpayer registered for sales tax, the Department issued the taxpayer a retail merchant certificate. Attached to that certificate was the relevant information concerning the registration and displaying requirement of the certificate. The second paragraph of this information states that based on the estimated monthly sales as stated on the business tax application, the taxpayer's filing frequency will be early filer. This certificate was issued to the taxpayer on 10/31/2005.

The initial sales tax return filed by the taxpayer was for the month of 11/30/2005. This return was filed and a payment by check was made on 12/20/2005 (the due date for early filing). After the taxpayer was changed to an electronic funds transfer payment, the sales tax return for December, 2005 was issued on 12/31/2005. The return reflected the due date of 01/20/2006. The electronic funds transfer payment was not made until 01/31/2006, which was 11 days after the due date.

The taxpayer was notified as early as 10/31/2005 that they are an early filer for sales tax purposes. The fact that the taxpayer paid its November, 2005 sales tax payment by 12/20/2006 indicates its awareness of its early filing status. There were no actions which would have changed the early filing status of the taxpayer's December, 2005 return payment.

The taxpayer has failed to show that the late payment of the December, 2005 sales tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest is denied.

RW/TG/DK 06/13/07